



Office of the Attorney General  
State of Texas

November 30, 1993

DAN MORALES  
ATTORNEY GENERAL

Mr. Charles Karakashian, Jr.  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR93-118

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).<sup>1</sup> Your request was assigned ID# 22577.

The Texas Department of Public Safety (the "department") has received a request for information "concerning the deaths of Grady Stroud and Melissa Diane Thurman" and information "concerning David Koresh and the Branch Davidians." With regard to the request for information concerning Grady Stroud and Melissa Thurman, you state that the department did not have any documents responsive to the request at the time the request was made. The department is not required to create new information in response to a request.<sup>2</sup> Open Records Decision No. 561 (1990). In reference to the request for information relating to David Koresh, you have provided documents prepared by the Criminal Intelligence Service (CIS). You did not submit for our review records held by the Texas Rangers that were prepared in their capacity as Deputy U.S. Marshalls. We understand, however, that the information is currently in the possession of the United States Attorney's Office and that you are therefore unable to provide it to our office. You contend that sections 552.101 and 552.108 (former sections 3(a)(1) and 3(a)(8)) of the Open Records Act except the information from required public disclosure.

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<sup>1</sup>We note that V.T.C.S. article 6252-17a was repealed by the 73rd Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup> Although you stated that no reports responsive to the request for information concerning Grady Stroud and Melissa Thurman were completed, you raised section 552.108 to preserve the exception in case any reports were completed in the near future. You subsequently sent to this office copies of investigative reports, one dated September 15, 1993 and two dated September 17, 1993 that you stated were created after the original request for information was made. You argue that release of any of the investigative reports would "seriously compromise the ongoing investigation." Although as noted above, you are not required to provide information that was not in existence at the time the original request was made, we agree that release of the reports that you say were generated after the request was made would unduly interfere with law enforcement.

Section 552.108 excepts from disclosure:

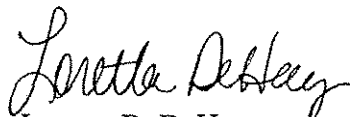
- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . .
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . .

In a criminal case that is under active investigation, section 552.108 exempts from disclosure all information except that normally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (copy enclosed). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 434, 444 (1986). In addition, this office has recognized that a law enforcement agency in this state can raise section 552.108 to protect the law enforcement interests of a federal agency. Open Records Decision No. 340 (1982).

You contend that the information concerning David Koresh and the Branch Davidians relates to criminal prosecutions pending in federal court. You state that a United States attorney has successfully moved the U.S. District Court to deny access to information held by the Texas Rangers to the defendants in the cases; you may therefore withhold those documents pursuant to section 552.108. In addition, you state that the same attorney is currently reviewing the documents held by the CIS to determine their precise relevance to the federal criminal cases. We have reviewed these documents in light of your section 552.108 claim; in our opinion, you may withhold the CIS documents under section 552.108 unless the U.S. attorney determines that they are not relevant to the pending criminal prosecutions.<sup>3</sup>

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

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<sup>3</sup>Because we have concluded that you may withhold the information pursuant to section 552.108, we do not address your arguments under section 552.101 in this ruling.

LRD/rho

Ref.: ID# 22577

Enclosures: Open Records Decision No. 127  
Submitted documents

cc: Ms. Kimberly Garcia  
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(w/o enclosures)